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NO. 80-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

In re MARY CATHERINE HALVORSEN,
Petitioner.

ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

BRIEF FOR RESPONDENT ALBERT (BOYER) HALVORSEN IN OPPOSITION

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OPINIONS OF COURTS BELOW

The King County Superior Court at Seattle, Washington, entered Findings of Fact and Conclusions of Law, and a Decree of Dissolution of Marriage on February 23, 1978 (Cause No. D-80812) (Pet. App. A-16). The Court of Appeals of Washington, Division I, entered its unreported opinion on July 14, 1980 (Case No. 7841-1-I) (Pet. App. A-1). The Supreme Court of Washington denied petitioner's petition for review on November 7, 1980 (Case No. 47319-6).

STATEMENT OF THE CASE

This is a divorce case. During the trial petitioner raised no constitutional issue or other federal question. The trial court entered a Decree of Dissolution of Marriage (Pet. App. A-16) in which provisions were made for child custody and visitation, support of the children entitled to support, and the disposition of

the property and liabilities of the parties. As required by Wash. Rev. Code § 26.09.080, the court endeavored to make a property disposition as appeared just and equitable considering all relevant factors, including (1) the nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time the division of property was to become effective.

Respondent thereafter appealed the matter, challenging the trial court's disposition of property, its award of child support and its failure to award petitioner maintenance or the amount of attorneys' fees and costs which she sought. The assignments of error set forth in petitioner's brief on appeal raised no constitutional issues or other federal questions,

and none were decided or considered by the appellate court in its opinion. (Pet. App. A-1.)

ARGUMENT

A. Petitioner Has Failed to Demonstrate the Existence of Circumstances Justifying the Issuance of a Writ of Mandamus Under 28 U.S.C. § 1651

It is well-established that the writs authorized by 28 U.S.C. § 1651 are drastic and extraordinary remedies to be reserved for extraordinary causes in which appeal is clearly an inadequate remedy. Kerr v. United States District Court, 426 U.S. 394 (1976); Will v. United States, 389 U.S. 90 (1967). See also, Rules of the Supreme Court, Rule 26.

Petitioner has failed to demonstrate the existence of such special circumstances here, or to show why adequate relief cannot be obtained by other means.

B. This Court Is Without Jurisdiction Under 28 U.S.C. § 1257(3)

It is essential to the jurisdiction of the Court under 28 U.S.C. § 1257(3) that the record affirmatively show that a federal question was presented for decision to the highest court of the state having jurisdiction, and that its decision of the federal question was necessary to the determination of the cause. Lynch v. New York, 293 U.S. 52 (1934); Honeyman v. Hanan, 300 U.S. 14 (1937).

No constitutional issue or other federal question was raised either in the trial or appellate courts in this case.

CONCLUSION

The Petition should be denied.

DATE: April 3, 1981.

Respectfully submitted,

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